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SENATE BILL 536

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

INTRODUCED BY  
Mary Kay Papen

AN ACT

RELATING TO PRESCRIPTION DRUGS; REVISING FEES FOR CERTAIN  
PHARMACEUTICAL BUSINESS LICENSES; AMENDING AND ENACTING  
SECTIONS OF THE PHARMACY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-11-14 NMSA 1978 (being Laws 1969,  
Chapter 29, Section 13, as amended) is amended to read:

"61-11-14. PHARMACY LICENSURE--WHOLESALE DRUG  
DISTRIBUTION BUSINESS LICENSURE--REQUIREMENTS--FEES--  
REVOCATION.--

A. Any person who desires to operate or maintain  
the operation of a pharmacy or who engages in a wholesale drug  
distribution business in this state shall apply to the board  
for the proper license and shall meet the requirements of the  
board and pay the annual fee for the license and its renewal.

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1                   B. The board shall issue the following classes of  
2 licenses that shall be defined and limited by regulation of the  
3 board:

- 4                   (1) retail pharmacy;
- 5                   (2) nonresident pharmacy;
- 6                   (3) wholesale drug distributor;
- 7                   (4) drug manufacturer;
- 8                   (5) hospital pharmacy;
- 9                   (6) industrial health clinic;
- 10                  (7) community health clinic;
- 11                  (8) department of health public health

12 offices;

- 13                  (9) custodial care facility;
- 14                  (10) home care services;
- 15                  (11) emergency medical services;
- 16                  (12) animal control facilities;
- 17                  (13) wholesaler, retailer or distributor of

18 veterinary drugs bearing the legend: "caution: federal law  
19 restricts this drug to use by or on the order of a licensed  
20 veterinarian". Such drugs may be sold or dispensed by any  
21 person possessing a retail pharmacy license, wholesale drug  
22 distributor's license or drug manufacturer's license issued by  
23 the board, without the necessity of acquiring an additional  
24 license for veterinary drugs;

- 25                  (14) returned drugs processors;

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1 (15) drug research facilities; and

2 (16) drug warehouses.

3 C. Every application for the issuance or annual  
4 renewal of:

5 (1) a license for a retail pharmacy,  
6 ~~[wholesale drug distributor, nonresident pharmacy, drug~~  
7 ~~manufacturer]~~ hospital pharmacy or drug research facility ~~[or~~  
8 ~~drug warehouse]~~ shall be accompanied by a fee set by the board  
9 in an amount not to exceed three hundred dollars (\$300);

10 (2) a license for a wholesale drug  
11 distributor, nonresident pharmacy, drug manufacturer or drug  
12 warehouse shall be accompanied by an annual fee not to exceed  
13 five thousand dollars (\$5,000); provided that the annual fee  
14 shall not exceed one thousand dollars (\$1,000) if Title 18 of  
15 the federal Social Security Act provides a prescription drug  
16 program comparable to one established pursuant to Paragraph (1)  
17 of Subsection D of Section 61-11-19 NMSA 1978;

18 ~~[(2)]~~ (3) a license for a custodial care  
19 facility or a returned drugs processor business shall be  
20 accompanied by a fee set by the board in an amount not to  
21 exceed two hundred dollars (\$200); and

22 ~~[(3)]~~ (4) a license for an industrial health  
23 clinic; a community health clinic; a department of health  
24 public health office; home care services; emergency medical  
25 services; animal control facilities; or wholesaler, retailer or

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1 distributor of veterinary drugs shall be accompanied by a fee  
2 set by the board in an amount not to exceed two hundred dollars  
3 (\$200).

4 D. If it is desired to operate or maintain a  
5 pharmaceutical business at more than one location, a separate  
6 license shall be obtained for each location.

7 E. Each application for a license shall be made on  
8 forms prescribed and furnished by the board.

9 F. Any person making application to the board for a  
10 license to operate a facility or business listed in Subsection  
11 B of this section in this state shall submit to the board an  
12 application for licensure indicating:

13 (1) the name under which the business is to be  
14 operated;

15 (2) the address of each location to be  
16 licensed and the address of the principal office of the  
17 business;

18 (3) in the case of a retail pharmacy, the name  
19 and address of the owner, partner or officer or director of a  
20 corporate owner;

21 (4) the type of business to be conducted at  
22 each location;

23 (5) a rough drawing of the floor plan of each  
24 location to be licensed;

25 (6) the proposed days and hours of operation

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1 of the business; and

2 (7) other information the board may require.

3 G. After preliminary approval of the application  
4 for a license for any facility or business listed in Paragraphs  
5 (1) through (8) and (10) through (16) of Subsection B of this  
6 section, a request for an inspection, together with an  
7 inspection fee not to exceed two hundred dollars (\$200), shall  
8 be submitted to the board for each business location, and an  
9 inspection shall be made of each location by the board or its  
10 agent.

11 H. Following a deficiency-free inspection, the  
12 executive director of the board may issue a temporary license  
13 to the applicant. The temporary license shall expire at the  
14 close of business on the last day of the next regular board  
15 meeting.

16 I. Licenses, except temporary licenses provided  
17 pursuant to Subsection H of this section, issued by the board  
18 pursuant to this section are not transferable and shall expire  
19 on December 31 of each year unless renewed. Any person failing  
20 to renew his license on or before December 31 of each year  
21 shall not have his license reinstated except upon reapplication  
22 and payment of a reinstatement fee set by the board in an  
23 amount not to exceed one hundred dollars (\$100) and all  
24 delinquent renewal fees.

25 J. The board, after notice and a refusal or failure

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1 to comply, may suspend or revoke any license issued under the  
2 provisions of the Pharmacy Act at any time examination or  
3 inspection of the operation for which the license was granted  
4 discloses that the operation is not being conducted according  
5 to law or regulations of the board.

6 K. Pharmaceutical sales representatives who carry  
7 dangerous drugs shall ~~[register with the board. The board may~~  
8 ~~charge a registration fee not to exceed fifty dollars (\$50.00)~~  
9 ~~and a renewal fee of no more than fifty dollars (\$50.00) per~~  
10 year.] provide the board with a written statement from the  
11 representative's employer that describes the employer's policy  
12 relating to the safety and security of the handling of  
13 dangerous drugs and to the employer's compliance with the  
14 federal Prescription Drug Marketing Act of 1987.

15 Pharmaceutical sales representatives are not subject to the  
16 licensing provisions of the Pharmacy Act."

17 Section 2. Section 61-11-19 NMSA 1978 (being Laws 1969,  
18 Chapter 29, Section 18, as amended) is amended to read:

19 "61-11-19. FUND ESTABLISHED--DISPOSITION--METHOD OF  
20 PAYMENT.--

21 A. There is established in the state treasury the  
22 "pharmacy fund".

23 B. All funds received by the board and all money  
24 collected under the Pharmacy Act or any other act administered  
25 by the board shall be deposited with the state treasurer for

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1 credit to the pharmacy fund.

2 C. Payments from the pharmacy fund shall be made  
3 upon warrants of the secretary of finance and administration on  
4 vouchers issued in accordance with the budget approved by the  
5 department of finance and administration.

6 D. Amounts paid into the pharmacy fund pursuant to  
7 Paragraph (2) of Subsection C of Section 61-11-14 NMSA 1978  
8 shall be expended as follows:

9 (1) fifty percent of the proceeds shall be  
10 used for a prescription drug program for persons over the age  
11 of sixty-five; provided that the board enters into an  
12 arrangement with a state agency or a state-created entity for  
13 the operation of the program;

14 (2) forty percent of the proceeds shall be  
15 used for a prescription drug program for low-income persons;  
16 provided that the board enters into an arrangement with a state  
17 agency or a state-created entity for the operation of the  
18 program; and

19 (3) ten percent of the proceeds shall be used  
20 pursuant to Subsections E and F of this section.

21 ~~[D.]~~ E. All amounts paid into the pharmacy fund  
22 shall only be used for the purpose of meeting necessary  
23 expenses incurred in the enforcement of the purposes of the  
24 Pharmacy Act and any other acts administered by the board, the  
25 duties imposed thereby and the promotion of pharmacy education

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1 and standards in this state. All money unused at the end of  
2 the fiscal year shall remain in the pharmacy fund for use in  
3 accordance with the provisions of the Pharmacy Act.

4 [~~E.~~] F. All funds which may have accumulated to the  
5 credit of the pharmacy fund shall be continued for use by the  
6 board in administration of the Pharmacy Act."

7 Section 3. APPLICABILITY.--The provisions of Paragraph  
8 (2) of Subsection C of Section 61-11-14 NMSA 1978 shall apply  
9 to the issuance of a license or annual renewal in calendar year  
10 2004 and subsequent years; provided that any fee already paid  
11 shall be credited to the new fee amount.